

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

-against-

PHILIP A. KENNER, *et al.*,

Defendants.

Criminal Docket No. 13-0607 (JFB)

**DECLARATION OF GEORGE  
KOSTOLAMPROS IN SUPPORT OF  
INTERESTED PARTY DANSKE BANK  
A/S LONDON BRANCH'S MOTION  
FOR SUMMARY JUDGMENT**

I, George Kostolampros, declare under penalty of perjury that the information set forth below is true and correct:

1. I am a partner in the law firm of Venable LLP in Washington, D.C. Venable LLP represents Petitioner Danske Bank A/S London Branch ("Danske") in an ancillary proceeding brought in connection with the above criminal matter.

2. I respectfully submit this Declaration in support of Petitioner's Motion for Summary Judgment in favor of its May 6, 2020 petition (the "Petition"), pursuant to Title 21, United States Code, Section 853(n), seeking adjudication of Danske's interest in certain property ordered forfeited by the March 16, 2020 Preliminary Order, in order to place before the Court true and correct copies of documents referred to in the accompanying Motion for Summary Judgment and Rule 56.1 Statement of Undisputed Facts.

3. A true and correct copy of a Financial Conduct Authority Webpage, last visited June 19, 2020, is attached hereto as **Exhibit 1**.

4. True and correct copies of the March 16, 2020 Preliminary Orders of Forfeiture (Dkt. Nos. 825, 826, *United States v. Kenner*, No 13-cr-0607 (E.D.N.Y.)) are attached hereto as **Exhibit 2**.

5. A true and correct copy of Danske's May 6, 2020 Petition (Dkt. No. 836, *United States v. Kenner*, No 13-cr-0607 (E.D.N.Y.)) is attached hereto as **Exhibit 3**.

6. A true and correct copy of the 2006 Loan Agreement, bearing beginning bates stamp DANSKE\_0010553, is attached hereto as **Exhibit 4**.

7. A true and correct copy of a March 2, 2006 Memorandum provided to Lehman Brothers, bearing beginning bates stamp DANSKE\_0016257, is attached hereto as **Exhibit 5**.

8. A true and correct copy of a Pledge Agreement of Diamante Cabo San Lucas, LLC, Kenneth A. Jowdy, and Diamante Cabo San Lucas S. De R.L. De C.V., bearing beginning bates stamp DANSKE\_0016321, is attached hereto as **Exhibit 6**.

9. A true and correct copy of a Pledge and Security Agreement of Diamante Cabo San Lucas, LLC, and Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0016294, is attached hereto as **Exhibit 7**.

10. A true and correct copy of a Pledge and Security Agreement made by Equity Interest Pledgors in favor of Lehman, bearing beginning bates stamp DANSKE\_0010741, is attached hereto as **Exhibit 8**.

11. A true and correct copy of a Pledge and Security Agreement made by Pledgors Diamante Cabo San Lucas, LLC and Kenneth A. Jowdy in Favor of Lehman, bearing beginning bates stamp DANSKE\_0010724, is attached hereto as **Exhibit 9**.

12. A true and correct copy of a Diamante Facility A Balance Sheet, bearing beginning bates stamp DANSKE\_0015604, is attached hereto as **Exhibit 10**.

13. A true and correct copy of the June 19, 2020 Declaration of Raul Humberto Zepeda Ruiz is attached hereto as **Exhibit 11**.

14. A true and correct copy of the 2006 Trust Agreement, bearing beginning bates stamp DANSKE\_0016011, is attached hereto as **Exhibit 12**.

15. A true and correct copy of the 2006 Trust Agreement Registration with the Public Registry, bearing beginning bates stamp DANSKE\_0016375, is attached hereto as **Exhibit 13**.

16. A true and correct copy of the 2006 Trust Agreement Notary Plus Public Registration filing, bearing beginning bates stamp DANSKE\_0016343, is attached hereto as **Exhibit 14**.

17. A true and correct copy of Lehman Brothers Holdings, Inc.'s ("Lehman") 2006 Delaware UCC Financing Statement for Diamante Cabo San Lucas, LLC, bearing beginning bates stamp DANSKE\_0016444, is attached hereto as **Exhibit 15**.

18. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for Diamante Cabo San Lucas LLC, bearing beginning bates stamp DANSKE\_0016317, is attached hereto as **Exhibit 16**.

19. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for KAJ Holdings, LLC, bearing beginning bates stamp DANSKE\_0016124, is attached hereto as **Exhibit 17**.

20. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for KAJ Holdings, LLC, bearing beginning bates stamp DANSKE\_0016122, is attached hereto as **Exhibit 18**.

21. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for CSL Properties 2006, LLC, bearing beginning bates stamp DANSKE\_0016253, is attached hereto as **Exhibit 19**.

22. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for Diamante Properties, LLC, bearing beginning bates stamp DANSKE\_0016120, is attached hereto as **Exhibit 20**.

23. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for Diamante Properties, LLC, bearing beginning bates stamp DANSKE\_0016319, is attached hereto as **Exhibit 21**.

24. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for Baja Ventures 2006, LLC, bearing beginning bates stamp DANSKE\_0016255, is attached hereto as **Exhibit 22**.

25. A true and correct copy of Lehman's 2006 Delaware UCC Financing Statement for Baja Ventures 2006, LLC, bearing beginning bates stamp DANSKE\_0016315, is attached hereto as **Exhibit 23**.

26. A true and correct copy of Lehman's 2006 Nevada UCC Financing Statement for Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0016313, is attached hereto as **Exhibit 24**.

27. A true and correct copy of Lehman's 2006 Nevada (Clark County) UCC Financing Statement for Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0016446), is attached hereto as **Exhibit 25**.

28. A true and correct copy of the 1999 Master Repurchase Agreement ("MRA"), bearing beginning bates stamp DANSKE\_0015762, is attached hereto as **Exhibit 26**.

29. A true and correct copy of the 2005 Committed Repurchase Facility Agreement, bearing beginning bates stamp DANSKE\_0015719, is attached hereto as **Exhibit 27**.

30. A true and correct copy of the 2001 Amendment to the MRA, bearing beginning bates stamp DANSKE\_0015780, is attached hereto as **Exhibit 28**.

31. A true and correct copy of the 2005 Amendment to the MRA, bearing beginning bates stamp DANSKE\_0015784, is attached hereto as **Exhibit 29**.

32. A true and correct copy of the 2006 Tri-Party Custody Agreement, bearing beginning bates stamp DANSKE\_0015839, is attached hereto as **Exhibit 30**.

33. A true and correct copy of the September 15, 2006 Letter Agreement replacing JPMorgan Chase & Co. with The Bank of New York Company, Inc. ("BNY") as Master Custodian, bearing beginning bates stamp DANSKE\_0015875, is attached hereto as **Exhibit 31**.

34. A true and correct copy of the September 15, 2008 Letter from Master Custodian BNY to Sub-Custodian LaSalle Bank, N/A noticing Lehman's Event of Default under the Tri-Party Custody Agreement, bearing beginning bates stamp DANSKE\_0015981, is attached hereto as **Exhibit 32**.

35. A true and correct copy of the Danske's September 15, 2008 Notice of Default Letter to Lehman, bearing beginning bates stamp DANSKE\_0016311, is attached hereto as **Exhibit 33**.

36. A true and correct copy of the Danske's September 23, 2008 Notice of Default Letter to Lehman, bearing beginning bates stamp DANSKE\_0015881, is attached hereto as **Exhibit 34**.

37. A true and correct copy of the January 2009 Omnibus Assignment and Assumption Agreement between Danske and Lehman, bearing beginning bates stamp DANSKE\_0012223, is attached hereto as **Exhibit 35**.

38. A true and correct copy of Danske's March 2009 UCC Financing Statement replacing Lehman with Danske as the secured party for debtor PF Ventures, LLC, bearing beginning bates stamp DANSKE\_0015263, is attached hereto as **Exhibit 36**.

39. A true and correct copy of Lehman's September 29, 2010 Motion for Approval of Settlement with Danske (Dkt. No. 11681, No. 08-133555(JMP) (Bankr. S.D.N.Y.)), is attached hereto as **Exhibit 37**.

40. A true and correct copy of Lehman's October 26, 2011 Motion for Approval of Settlement with Danske (Dkt. No. 21298, No. 08-133555(JMP) (Bankr. S.D.N.Y.)), is attached hereto as **Exhibit 38**.

41. A true and correct copy of the Bankruptcy Court's November 18, 2011 Order approving Lehman's October 26, 2011 Motion for Approval of Settlement with Danske (Dkt. No. 22338, No. 08-13555(JMP) (Bankr. S.D.N.Y.)), is attached hereto as **Exhibit 39**.

42. A true and correct copy of the 2009 Amended and Restated Loan Agreement, bearing beginning bates stamp DANSKE\_0013865, is attached hereto as **Exhibit 40**.

43. A true and correct copy of the March 6, 2009 Substitute Facility A Promissory Note, bearing beginning bates stamp DANSKE\_0014021, is attached hereto as **Exhibit 41**.

44. A true and correct copy of several loan notices to Diamante Cabo San Lucas S. De R.L. De C.V. from Trimont, bearing beginning bates stamp DANSKE\_0015590, is attached hereto as **Exhibit 42**.

45. A true and correct copy of a March 2009 UCC Financing Statement replacing Lehman with Danske as the secured party for debtor KAJ Holdings, LLC, bearing beginning bates stamp DANSKE\_0013220, is attached hereto as **Exhibit 43**.

46. A true and correct copy of the March 6, 2009 Substitute Facility B Promissory Note, bearing beginning bates stamp DANSKE\_0014031, is attached hereto as **Exhibit 44**.

47. A true and correct copy of a 2016 Facility B balance sheet issued by Trimont, bearing beginning bates stamp DANSKE\_0015502, is attached hereto as **Exhibit 45**.

48. A true and correct copy of the First Amendment to the Amended and Restated Loan Agreement and Modification Agreement, bearing beginning bates stamp DANSKE\_0010809, is attached hereto as **Exhibit 46**.

49. A true and correct copy of the June 29, 2012 Letter Agreement for the Extension of Maturity Date, bearing beginning bates stamp DANSKE\_0010886, is attached hereto as **Exhibit 47**.

50. A true and correct copy of the September 28, 2012 Letter Agreement for the Third Extension of Maturity Date, bearing beginning bates stamp DANSKE\_0010899, is attached hereto as **Exhibit 48**.

51. A true and correct copy of the December 31, 2012 Letter Agreement for the Fourth Extension of Maturity Date, bearing beginning bates stamp DANSKE\_0010870, is attached hereto as **Exhibit 49**.

52. A true and correct copy of the March 31, 2012 Letter Agreement for the Fifth Extension of Maturity Date and Related Modifications, bearing beginning bates stamp DANSKE\_0010850, is attached hereto as **Exhibit 50**.

53. A true and correct copy of the Second Amended and Restated Loan Agreement, bearing beginning bates stamp DANSKE\_0011080, is attached hereto as **Exhibit 51**.

54. A true and correct copy of the 2013 Note Splitter and Modification Agreement, bearing beginning bates stamp DANSKE\_0011683, is attached hereto as **Exhibit 52**.

55. A true and correct copy of the April 26, 2013 Second Substitute Facility A Promissory Note, bearing beginning bates stamp DANSKE\_0011865, is attached hereto as **Exhibit 53**.

56. A true and correct copy of the April 26, 2013 Third Substitute Facility B Promissory Note, bearing beginning bates stamp DANSKE\_0012068, is attached hereto as **Exhibit 54**.

57. A true and correct copy of the April 26, 2013 Facility C Promissory Note, bearing beginning bates stamp DANSKE\_0012098, is attached hereto as **Exhibit 55**.

58. A true and correct copy of the April 26, 2013 Facility D Promissory Note, bearing beginning bates stamp DANSKE\_0012118, is attached hereto as **Exhibit 56**.

59. A true and correct copy of an April 29, 2013 Danske Bank Funding Memo, bearing beginning bates stamp DANSKE\_0015736, is attached hereto as **Exhibit 57**.

60. A true and correct copy of the Third Amended and Restated Loan Agreement, bearing beginning bates stamp DANSKE\_0012231, is attached hereto as **Exhibit 58**.

61. A true and correct copy of the April 29, 2014 Consolidated, Amended and Restated Replacement Note C Promissory Note, bearing beginning bates stamp DANSKE\_0013058, is attached hereto as **Exhibit 59**.

62. A true and correct copy of the 2009 Amendment and Restatement Agreement to the Irrevocable Guaranty Trust Agreement, including the English translation and the original in Spanish, bearing beginning bates stamp DANSKE\_0012726, is attached hereto as **Exhibit 60**.



63. A true and correct copy of the 2013 Unofficial English Translation of Second Amendment to Trust Agreement, bearing beginning bates stamp DANSKE\_0010532, is attached hereto as **Exhibit 61**.

64. A true and correct copy of the October 30, 2014 First Amendment to Third Amended and Restated Loan Agreement and Modification Agreement, bearing beginning bates stamp DANSKE\_0013826, is attached hereto as **Exhibit 62**.

65. A true and correct copy of the September 8, 2018 Second Amendment to Third Amended and Restated Loan Agreement and Modification Agreement, bearing beginning bates stamp DANSKE\_0011031, is attached hereto as **Exhibit 63**.

66. A true and correct copy of the April 30, 2013 Second Amended Trust Agreement, bearing beginning bates stamp DANSKE\_0012138, is attached hereto as **Exhibit 64**.

67. A true and correct copy of the March 6, 2009 Reaffirmation of Pledge and Security Agreement of Kenneth A. Jowdy and Diamante Cabo San Lucas, LLC, bearing beginning bates stamp DANSKE\_0014190, is attached hereto as **Exhibit 65**.

68. A true and correct copy of the March 6, 2009 Reaffirmation of Pledge and Security Agreement of Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0014196, is attached hereto as **Exhibit 66**.

69. A true and correct copy of the March 6, 2009 Pledge and Security Agreement of PF Ventures, LLC, bearing beginning bates stamp DANSKE\_0014224, is attached hereto as **Exhibit 67**.

70. A true and correct copy of Danske's March 2009 UCC Financing Statements replacing Lehman with Danske as the secured party for debtors KAJ Holdings, LLC, CSL Properties 2006, LLC, Baja Ventures 2006, LLC, Diamante Properties, LLC, Diamante Cabo San

Lucas, LLC, and Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0015269, is attached hereto as **Exhibit 68**.

71. A true and correct copy of Danske's March 2009 UCC Financing Statements for Diamante Cabo San Lucas, LLC, Diamante Properties, LLC, Baja Ventures 2006, LLC, CSL Properties 2006 LLC and KAJ Holdings, LLC, bearing beginning bates stamp DANSKE\_0013228, is attached hereto as **Exhibit 69**.

72. A true and correct copy of Danske's 2014 lien searches for Diamante Cabo San Lucas, LLC, Diamante Properties, LLC, Diamante Club, LLC, Diamante CSL, LLC, CSL Properties 2006 LLC, PF Ventures, LLC, KAJ Holdings, LLC, and Kenneth A. Jowdy, bearing beginning bates stamp DANSKE\_0016126, is attached hereto as **Exhibit 70**.

73. A true and correct copy of the June 5, 2013 Fidelity National Title Insurance Company UCC 9 Loan Insurance Policy, bearing beginning bates stamp DANSKE\_0011928, is attached hereto as **Exhibit 71**.

74. A true and correct copy of the June 12, 2014 Fidelity National Title De Mexico, S.A. De C.V. Loan Policy of Title Insurance, bearing beginning bates stamp DANSKE\_0013430, is attached hereto as **Exhibit 72**.

75. A true and correct copy of the April 26, 2013 Reaffirmation of Pledge and Security Agreement of PF Ventures, LLC, bearing beginning bates stamp DANSKE\_0010945, is attached hereto as **Exhibit 73**.

76. A true and correct copy of an April 26, 2013 Reaffirmation of Pledge and Security Agreement made by Pledgor Kenneth A. Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0011611, is attached hereto as **Exhibit 74**.

77. A true and correct copy of an April 26, 2013 Pledge and Security Agreement made by Pledgors Diamante Properties, LLC and KAJ Holdings, LLC in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0011624, is attached hereto as **Exhibit 75**.

78. A true and correct copy of an April 26, 2013 Pledge and Security Agreement made by Pledgors Diamante Cabo San Lucas LLC and Kenneth A. Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0011741, is attached hereto as **Exhibit 76**.

79. A true and correct copy of an April 26, 2013 Pledge and Security Agreement made by Pledgors Diamante Cabo San Lucas LLC and Kenneth A. Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_00111786, is attached hereto as **Exhibit 77**.

80. A true and correct copy of an April 26, 2013 Pledge and Security Agreement (U.S. Accounts) made by Pledgor Diamante Cabo San Lucas S. De R.L. de CV in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0011813, is attached hereto as **Exhibit 78**.

81. A true and correct copy of a March 6, 2009 Reaffirmation of Pledge and Security Agreement made by Pledgor Kenneth Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0012931, is attached hereto as **Exhibit 79**.

82. A true and correct copy of an April 29, 2014 Reaffirmation of Pledge and Security Agreement made by Pledgors Diamante Properties, LLC and KAJ Holdings, LLC in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0013769, is attached hereto as **Exhibit 80**.

83. A true and correct copy of an April 29, 2014 Reaffirmation of Pledge and Security Agreement made by Pledgor PF Ventures, LLC in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0012720, is attached hereto as **Exhibit 81**.

84. A true and correct copy of an April 29, 2014 Reaffirmation of Pledge and Security Agreement made by Pledgors Diamante Cabo San Lucas, LLC and Kenneth A. Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0012796, is attached hereto as **Exhibit 82**.

85. A true and correct copy of an April 29, 2014 Reaffirmation of Pledge and Security Agreement made by Pledgor Kenneth A. Jowdy in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0013734, is attached hereto as **Exhibit 83**.

86. A true and correct copy of the October 29, 2013 Indictment against Phillip A. Kenner and Tommy C. Constantine (Dkt. No. 1, *United States v. Kenner*, No. 13-cr-0607 (E.D.N.Y.)) is attached hereto as **Exhibit 84**.

87. A true and correct copy of the April 22, 2015 Superseding Indictment against Phillip A. Kenner and Tommy C. Constantine (Dkt. 214, *United States v. Kenner*, No. 13-cr-0607 (E.D.N.Y.)) is attached hereto as **Exhibit 85**.

88. A true and correct copy of the April 22, 2015 Bill of Particulars (Dkt. No. 208, *United States v. Kenner*, No. 13-cr-0607 (E.D.N.Y.)) is attached hereto as **Exhibit 86**.

89. A true and correct copy of the July 9, 2015 Jury Verdict (Dkt. No. 324, *United States v. Kenner*, No. 13-cr-0607 (E.D.N.Y.)) is attached hereto as **Exhibit 87**.

90. A true and correct copy of the August 20, 2015 Bill of Particulars (Dkt. No. 328, *United States v. Kenner*, No. 13-cr-0607(E.D.N.Y.)) is attached hereto as **Exhibit 88**.

91. A true and correct copy of the June 18, 2020 Declaration of David Daniel is attached hereto as **Exhibit 89**.

92. A true and correct copy of the January 14, 2020 Letter from Danske Bank, A/S London Branch to Diamante Cabo San Lucas S. de R.L. de C.V. noticing Diamante Cabo San Lucas S. de R.L. de C.V.'s Event of Default under the Loan Documents, bearing beginning bates stamp DANSKE\_0015713, is attached hereto as **Exhibit 90**.

93. A true and correct copy of a March 31, 2020 Foreign Currency Account – Statement of Account No. 29 issued to Diamante Cabo San Lucas S. de R.L. de C.V. by Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0016565, is attached hereto as **Exhibit 91**.

94. A true and correct copy of a February 28, 2020 Foreign Currency Account – Statement of Account No. 52 issued to Diamante Cabo San Lucas S. de R.L. de C.V. by Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0015673, is attached hereto as **Exhibit 92**.

95. A true and correct copy of a February 28, 2020 Foreign Currency Account – Statement of Account No. 59 issued to Diamante Cabo San Lucas S. de R.L. de C.V. by Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0015515, is attached hereto as **Exhibit 93**.

96. True and correct copies of wire transfer confirmations from Danske Bank to Diamante Cabo San Lucas, S. de R.L. de C.V., bearing beginning bates stamps DANSKE\_0015707, DANSKE\_0015884, DANSKE\_0015889, DANSKE\_0015890, DANSKE\_0015893, DANSKE\_0015896, DANSKE\_0015897, DANSKE\_0015901, DANSKE\_0015906, DANSKE\_0015907, DANSKE\_0015909, DANSKE\_0015914, DANSKE\_0015915,

DANSKE\_0015920, DANSKE\_0015922, DANSKE\_0015924, DANSKE\_0015931,  
DANSKE\_0015932, DANSKE\_0015933, DANSKE\_0015935, DANSKE\_0015938,  
DANSKE\_0015941, DANSKE\_0015947, DANSKE\_0015950, DANSKE\_0015952,  
DANSKE\_0015953, are attached hereto as **Exhibit 94**.

97. A true and correct copy of a March 6, 2009 Pledge and Security Agreement by Pledgor PF Ventures, LLC in favor of Danske Bank A/S, London Branch, bearing beginning bates stamp DANSKE\_0015243, is attached hereto as **Exhibit 95**.

98. True and correct copies of Danske's September 18, 2009 Proofs of Claim filed in Lehman's bankruptcy proceeding (No. 08-13555(JMP) (Bankr. S.D.N.Y.)), bearing beginning bates stamp DANSKE\_0015742, are attached hereto as **Exhibit 96**.

99. A true and correct copy of a 2016 Facility C balance sheet issued by Trimont, bearing beginning bates stamp DANSKE\_0015670, is attached hereto as **Exhibit 97**.

100. A true and correct copy of a January 29, 2010 Danske Bank Funding Memo for the Property Diamante Cabo San Lucas, Mexico, bearing beginning bates stamp DANSKE\_0015956, is attached hereto as **Exhibit 98**.

101. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on January 17, 2020 in Washington, D.C.

Dated: June 19, 2020

/s/ George Kostolampros  
GEORGE KOSTOLAMPROS